IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6467 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI K PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 21/04/2001

ORAL JUDGEMENT

The petitioner has challenged the order dated 30th July, 1991 passed by the Gujarat Revenue Tribunal in Review Application No.TEN.B.S.129/87 whereby the following effective order is made :

"12. The revision application is

allowed. The orders of the courts below are set aside and the matter is remanded to the Mamlatdar & A.L.T. Valsad, to obtain the canal certificate from the Canal Officer who would issue it after hearing the applicant and after obtaining such certificate the Mamlatdar & A.L.T. will hear the parties and keeping the observations made hereinabove in view, he will decide the matter according to law."

2. It appears that the principal grievance of the petitioner is against various observations made by the Tribunal while making the aforesaid order of remand. Prima facie, the grievance of the petitioner is justified in as much as while passing the order of remand it would not be open to the Tribunal to make any observation or record any final finding on merits of the controversy.

3. We, therefore, sustain the ultimate order of remand subject to modification in the operative portion by deleting the following words :

"Keeping the observations made herein above in view"

from the order of the Tribunal. The Mamlatdar and ALT, Valsad will hear the petitioner afresh without being in any way influenced by any of the observations or findings made or recorded by the Tribunal.

4. The order dated 30th July 1991 passed by the Gujarat Revenue Tribunal is, therefore, modified to the aforesaid extent.

5. The petition is disposed off accordingly. Rule is discharged with no order as to costs. Ad-interim relief granted vide order dated 13th September, 1991 stands vacated.

(D.A. Mehta, J)

'Bhavesh'